

NEW HAMPSHIRE STATE BUILDING CODE REVIEW BOARD

Minutes of Meeting

March 14, 2003

Attendance:

Tyler Carlisle, Board of Engineers, licensed electrical engineer
Bob Longchamps, NH Electrical Contractors Business Assoc., licensed master electrician
Richard Swain, NH Plumbing & Mechanical Contractors Association
Med Kopczynski, Assistant City Manager Keene, NH Municipal Association
Wes Golomb, State energy conservation code office
Tedd Evans, Board for licensing and regulation of plumbers, licensed master plumber
Ray Cowan, PE, Board of Engineers, licensed structural engineer
Senator Bob Clegg, Chairman, designee for the Department of Safety
Ken Andrews, NH Building Officials Assoc., municipal building official
William Smagula, PE, Board of Engineers, licensed mechanical engineer
Tom Lambert, Chief, Municipal Fire Chief, NH Association of Fire Chiefs
Joseph Landers, residential building contractor, NH Home Builders Association

With a quorum of the Board present, Chairman Clegg so declared and called the meeting to order. Notice of the public hearing / meeting was posted at the Department of Safety and State House, the State Fire Academy, and the Manchester Union Leader and the Legislative Office Building a minimum of 2 weeks prior to scheduled meeting date.

Public Hearing:

Chairman Clegg: 2002, National Electrical Code, into the State Building Code. Who wants to come first. Thank you. State your name, please, for the record.

Mark Hilbert: I am a Senior Electrical Inspector for the Electricians Licensing Board. I am just here this morning . . . I just briefly . . . thank you for hearing us today. And primarily, I just, we're proposing that the Building Code Review Board adopt the 2002 National Electrical Code into the State Building Code. Our . . . currently, the electrician's licensing board has already adopted the 2002 Code, and the State Building Code is still under the 1999 NEC. The 2002 has the latest technology, and is the most current national electrical code available. We are requesting that the State Building Code be basically on the same page with the Electrician's Licensing Board, who has already adopted the 2002.

Chairman Clegg: Any questions? Seeing none, thank you very much.

Mark Hilbert: Thank you for hearing me.

Chairman Clegg: Is there anyone else who would like to speak? Seeing no one else. . I will close the public hearing.

Adoption of Minutes:

Chairman Clegg: The first order of business is the adoption of the minutes . . . February 21. Do I have a **Motion**?

Motion to adopt was accepted by the Chair. **Seconded** by Wes Golomb. There being no comments, corrections, corrections, omissions the Chair asked for a vote. Vote was unanimous and so declared.

Old Business:

Chairman Clegg: I would like to take up the electrical request first.

Ken Andrews: I make a **Motion** that this Board take whatever steps are necessary to incorporate the 2002 National Electric Code, into the State Building Code, as presented.

Tyler Carlisle: I **Second**.

Chairman Clegg: Moved and seconded. Discussion?

Joe Landers: When the electricians board adopted the NEC, did they adopt it with any amendments or were there any amendments?

Mark Hilbert: If I may Mr. Chairman?

Chairman Clegg: No. Go ahead and answer the question.

Mark Hilbert: No we do not adopt, we do not have any amendments to the NEC. We adopted it as it reads.

Chairman Clegg: Any other questions, discussions? Seeing none, the **Motion** on the floor is to adopt the 2002 National Electrical Code as the State Building Code. All those in favor say Aye.

Body: Aye.

(Vote was unanimous and so declared by the Chair.)

Chairman Clegg: All the lawyers will do what's necessary to make sure it goes out on the web, and its adopted properly. Understand that every Rule that we do here, has to be, within 2 years, ratified by the State Legislature. So be prepared to come help us with that one bill where we have all the changes.

Mark Hilbert: No problem. It would be my pleasure sir.

Chairman Clegg: Thank you very much for coming.

Mark Hilbert: Thank you. Thank you for your time.

Chairman Clegg: Old business . . . lets start with **Exhibit 3**. Can I have a **Motion** to get this on the floor?

Tedd Evans: Mr. Chairman, I **Move** that the Board (inaudible) the amendments presented by the Plumbing Board for adoption to the 2002 International Code.

Chairman Clegg: Under **Exhibit 3**. Ok I need a second.

Ray Cowan: I **Second**.

Chairman Clegg: Thank you. Discussion . . .

Ken Andrews: Just one questions Mr. Chair. Are we going to address these individually, or as a package?

Chairman Clegg: Its been suggested that we look at them. What does the Body wish? Individually? Everybody agree? I am passing out some other **Exhibits** . . . **Exhibit 6** and **Exhibit 7** which are suggestions for some change.

Chairman Clegg: Starting with **Exhibit 3** . . . section (a) . . . does anybody have any objection to the insertion of New Hampshire? Seeing none, does anybody have a problem with section (b)?

Tyler Carlisle: Mr. Chairman, we had suggested last time, that the words 'the international fuel gas code' be changed to NFPA 56A. . . is that still correct. . .not correct?

?: Right now Carlisle . . . are you talking about (b)?

Tyler Carlisle: Yes.

Chairman Clegg: Yes - 102.2.

Tyler Carlisle: The last 5 words in the sentence . . . 'the International Fuel Gas Code' that refers to.

?: The Exhibit that I have, has that crossed off. The whole thing is not there.

Tyler Carlisle: Oh, ok. Is that not covered by 56A or what? Or . . .

Chairman Clegg: We are currently into the Bar Code . . . those things are covered by NFPA - as long as we don't make a reference to any other Code, and its crossed out, we shouldn't have to make any reference to NFPA on this one.

Tyler Carlisle: Ok.

Chairman Clegg: Any others?

Ken Andrews: Like I said last month, I do not believe we should be taking the reference out of this section. The old code reference . . . the sentence itself. There are those that in preparation of plans or specs, or whatever . . . seek to have as much guidance as possible, and even though anybody in the industry understands that the Gas Code does in fact, regulate gas installations . . . I feel that we still need to leave a reference in there. If the problem is the last 4 or 5 words . . . I do not have a problem with eliminating them, and either inserting NFPA 56A - or the State Fire Code, or the appropriate national recognized gas code. But I think the reference still needs to be there, as a road map to take people where they belong.

Chairman Clegg: So if I understand you correctly, you are asking that the installation of fuel gas distribution, piping and equipment, fuel gas fired water heaters, and water heater venting systems shall be regulated by the State Fire Code?

Ken Andrews: If that's . . . yes. Either State Fire Code or a nationally recognized gas code, or NFPA 56A. I do not have a preference on what goes there, I just feel as if something has to go there.

Rick Swain: I guess. . . I don't have a problem with this, other than we're going to set a precedence here. Its going to run through all these Code books, where we . . the State Code is narrowed down to the 5 documents. And when we start on one of these documents, and start to eliminate bits and pieces of wording, that references other documents, we can spend months doing that, in the Mechanical Code, in the Building Code, in . . . this is prevalent through all the Code books, that refer to other documents, and if we're going to do that, then we need to do it across the board. And its going to be a pretty large project. We need to look at that because you are going to find that every single code book is going to refer to stuff that is not . . not accurate. But the law says we are limited to 5 documents. I understand it would be nice to have an amendment that directs people to the right place, but we almost would have to set up a sub-committee to go through every one of these books, and find every one of these references and do it all as a group, because otherwise, we are starting to (inaudible) here we're going to have it, there we're not going to have it. And I think we may want to fowl that. Because there are probably multiple places in this book that there's other references to things that are outside the law.

Chairman Clegg: So you are suggesting that we waive the crossed out, and make no reference?

Rick Swain: No I am suggesting that it should stay, and if we are going to go through the Code books, and eliminate things that refer to something that is outside our State Building Code - then we do it across the board. And not just do it in this Code. And I am not sure we have done it everywhere in this Code. I'm not . . I think there's quite a few references to things that belong outside the Code, especially when you get into . . like I say, everyone of these Code books are going to do this.

Chairman Clegg: Anyone else? Ok. The situation is this. We actually Ken, do you want to make yours into a **Motion**, so that we have something to vote on?

Ken Andrews: Yes I would like to do that, I would like to **Move** that the proposed language to be stricken not be stricken, and that the last sentence reads "**The installation of fuel gas distribution piping and equipment, fuel gas fired water heaters, and water heater venting systems shall be regulated by the NFPA 56A.**"

Tyler Carlisle: I **Second** the motion.

Chairman Clegg: Motion on the floor. All those in favor? I am sorry - discussion.

Ray Cowan: Tyler why do you feel . . . I understand Ken's . . why do you feel its necessary?

Tyler Carlisle: Because 56A is the standard that everybody uses that I know of, in this industry.

Rick Swain: I believe its . . the actual NFPA Code is 54A.

Ken Andrews: Yes. 54A. I am sorry.

Tedd Evans: If we make this change, then I think then we are committing to making similar changes in all the Codes. I guess that is more of a question to the group - then a statement. I think that would be the trend then, and we are going to have to pay attention to this in every booklet, that we are currently under, so that we get the right Code reference. And one that is adopted by law in this state.

Med Kopczynski: Mr. Chairman, a long-term (inaudible) in fact he was . . . this group may want to do . . . it may want to look at all these Codes, in relationship to the State Fire Code and each other, and make whatever so of editorial changes, might be prudent to point, especially for the general public, what the rules of the road are. This Code is not just for practitioners and its not just for plumbers and its not just for people who are in the regulatory environment. . . its also selectmen, its also for home owners and its also for individuals that may not be familiar with the great State of New Hampshire. So it should be as clearly written as possible and as comprehensive as possible. I tend to agree that pointing the public in the right direction-to where to go to access the gas codes, is probably in the best interest of the State and its good for the public to know what the Rules are. So I think long-term Ted, you are right. We probably should take a look at them comprehensively but not today.

Chairman Clegg: Any other discussion?

Tedd Evans: One other point here, the installation of fuel gas distribution, piping, equipment etc, etc, . . . is not only regulated by NFPA 54, but its also regulated by the International Mechanical Code that we have adopted. Should we be putting that in there as well?

Chairman Clegg: Ken Andrews.

Ken Andrews: Just . . . it wasn't in there before. The I Code didn't . . . the International Plumbing Code didn't refer to it, didn't feel as though they needed to refer to the International Mechanical Code in that paragraph, so I don't see a reason to do it either.

Chairman Clegg: Ok. Now I am confused. You're saying that Mechanical Code controls what in here?

Tedd Evans: Well, Mechanical Code deals with things like combustion, ventilation, air and certain other aspects of appliance installation, that may or may not be dealt with by NFPA 54.

Chairman Clegg: So are you suggesting we say NFPA 54A or . . . the Mechanical International . . .

Tedd Evans: I think that's my suggestion. Is we include that reference as well.

Chairman Clegg: What happens when we do that?

Med Kopczynski: I think you will find, Mr. Chairman, if I may, I think that if you read the International Mechanical Code, what its going to refer you to is the for those portions that the . . . 54 document is referring to, its going to refer you to the International Fuel Gas Code. They are comparable documents. They cover the same subject matter. They are meant to cover the same subject matter. I don't really think there's going to be a terrible conflict in the International Mechanical Code, and if you follow the structure of the statutes anyway . . . at least for this particular subject, its going to be the Fire Code that takes precedence anyway, which isn't 54.

Chairman Clegg: Bill . . . you want to pitch in . . . from the Fire Marshal's office?

Bill Degnan: Thank you Mr. Chairman. The reference to the State Fire Code certainly is that it takes precedence if there is a conflict. But I think the argument I'm hearing around the table is valid and that it causes confusion if they have to go to two different places for those Codes. And NFPA 54 NFPA 31 that deals with the heating systems, whether its oil or gas, and NFPA 211 gets into the ventilation of both systems. Its already addressed on

that side, so to steer them in a direction of those documents so that you don't have them going by two, is probably a prudent idea. One of the issues would come up is for the people who are doing the enforcement in the field, they go and the contractor says he used the International Mechanical, and never used the NFPA, then it creates more confusion for them. And the fire service does most of the enforcement, which they would be using the NFPA Codes.

Chairman Clegg: But we adopted the Mechanical Code.

Bill Degnan: You mean the International Mechanical Code has been adopted?

Chairman Clegg: Yes.

Bill Degnan: I guess just to reference that the State Fire Code probably for those issues, is probably a good idea to eliminate confusion.

Ray Cowan: I'm still bothered by the fact that we are pulling out one particular code and identifying it as a reference, because I would assume that there are other installations other than gas. There's oil, we don't identify . . there must be a NFPA dealing with that as well, as it deals with everything else. I think we are going to open up a huge can of worms that we've got to identify every single one. Rather than, . . . here we are talking about the fuel gas code. Well, gas code. Well what about the others. I don't think it belongs there.

Rick Swain: I didn't spend much time looking at this, but if I go to section 502 of the International Plumbing Code, I've got another reference back to the International Fuel bill. I think what we need to do is we need to look at these documents under water heater installations, it says - yes water heaters shall conform with the requirements of the International Fuel Gas Code. I think we need to look at the documents on that basis only. We need to look at all of them. I really think it would probably take a sub committee to work on this for a couple of months and identify all the areas and all the codes that in conflict, and come forward with a copy as a package that cleans the whole thing up in one fatal swoop. I think to just pick this line in this section, and another line in another section, I think we open ourselves up for almost more confusion because you have your changing in one part, but you're not changing it in another. So does that mean that you didn't change it in the 2nd part, so does that mean its . . . we actually create more . . . we are actually saying that the 2nd part is more valid, by not making the necessary corrections. I think we are going to find, . . . I think we are going to find lots of these. And I think we should probably have a clarifying document to help people understand how to use the Codes. I think that is probably very valid. I think the document needs to be accurate - across the 5 books. I haven't even looked at yours Wes, as to where there might be conflicts, but . . . I can't read yours yet.

Chairman Clegg: Ok . . .

Rick Swain: I guess I would like to see the whole thing stricken then. The amendment.

Ken Andrews: For the sake of previty we can't put the International Fuel Gas code in, then I would **withdraw my motion** - and leave it as it.

Chairman Clegg: Will the **second withdraw his second**?

Tyler Carlisle: **Withdrawn**.

Chairman Clegg: Ok. So we are back to the original 102.2. Any more discussion?

Tyler Carlisle: If we're going to go through and do changes to the documents, would this not be changed at that point in time with the International Fuel Code to be taken out and therefore, the scope should be left as it is without taking nothing out now at this time.

Chairman Clegg: I am looking at that document that has that stricken out now.

Tyler Carlisle: I am suggesting that should not be stricken at this time.

Rick Swain (?): I'll **Second** that.

Chairman Clegg: Is that a **Motion**?

Tyler Carlisle: **So moved**.

Chairman Clegg: Ok. We have a new motion on the floor not to stricken any of it. Comments.

Tedd Evans: Along with that **Motion**, I would like to see added, that this and other similar references in other Codes will be dealt with at some future point, rather than say leave it out - in the cold.

Chairman Clegg: You're not asking me to put that in the Code.

Tedd Evans: No. I am just asking you to put that in the **Motion**.

Tyler Carlisle: I would not add that to my **Motion** at this time.

Chairman Clegg: Its his **Motion** to make changes to the Code. Any discussion on the original motion?

Tedd Evans: Can he repeat it please.

Tyler Carlisle: Yes. I move that nothing be stricken from Scope 102.2.

Chairman Clegg: You do not have a tag down there so I apologize.

Tom Lambert: Are we in fact, by putting this back in, its creating that confusion as to what code will have precedence over these types of installations, if there is a conflict?

Chairman Clegg: Its already there is other part of the statute. I think what we are going to have to do is in the first place is attack this in on the website. And I think maybe some of us could come up with some typical questions that might be asked, and we can direct people on the website for the time being, to the State Fire Code as well. We knew this was going to happen. But, I have also got to point out that this isn't a new situation. We've . . . by coming to one group of Codes, we did away with a whole lot of other conflicts. But obviously we are not going to do away with all of them. What is the pleasure of the body? Any other discussion? All in favor in keeping all those lines say Aye. All those opposed No. 3 No's. **Motion still passes**. That stays in.

?: Mr. Chairman, I would like to make a **Motion** that we create a sub-group a sub-committee to study the changes we have been discussing about across the 5 documents.

Chairman Clegg: Ok. If you could hold that until we are done working with **Exhibit 3**. It will be the last thing.

Ray Cowan: A question. Should, as we go through these, should we be voting to adopt or not adopt?

Chairman Clegg: We will adopt the whole document at the end. Or not.

Ray Cowan: Or not.

Chairman Clegg: 104.2 - Rule-making Authority . . . any discussion? Seeing none . . . 106.6.2 Fee Schedule . . .

Med Kopczynski: Mr. Chairman, if we are going to take them line by line, I would like to make a **Motion** on 104.2.

Chairman Clegg: I'm only . . what I want to do is just make the changes that we agreed to, and then at the end, we'll take the whole document.

Med Kopczynski: I would like to make a **Motion** that the additions be deleted.

Chairman Clegg: Oh ok. The additions be deleted.

Med Kopczynski: Yep.

Ken Andrews: I **Second**.

Chairman Clegg: Second by Ken Andrews. Discussion.

?: Would you explain why you want to do that?

Med Kopczynski: Yes I would. I don't think its appropriate that this particular language that this is a directing language at local government. I think it's a burden to local government. I don't think that any local government should have to adopt and promulgate written rules and regulations adopted by ordinance. I think there's a well known establishment and tenant that departments are able to develop procedures and processes without having to write them down, and get them adopted by local government as far as how they operate, and that's what this will do. Anytime that I need to set any permitting policy, or plan review policy, the way this is written, I will have to take it my city council, and I will have to get it approved.

Joe Landers: Are you suggesting that any of those Rules, forgetting the issue of the ordinances, do you suggest that they not be written?

Med Kopczynski: No. I do not have a problem with them being written Rules.

Joe Landers: Would you like to perhaps amend your **Motion** to keep the word written?

Med Kopczynski: I would accept that as a friendly amendment.

?: I will second your friendly amendment.

Chairman Clegg: The motion before us is to remove the lines added "**approved by ordinance, kept on file, and sent to the State of NH Board for Licensing and Regulations of Plumbers**" to be deleted. Seeing no discussion . . . all those in favor . . . say Aye. Opposed . . . no opposition.

Chairman Clegg: 106.6.2 Fee Schedule - anyone? Seeing none. 106.6.3 Fee Refunds - totally stricken - any comments? I like refunds. Violation penalties . . . Ken Andrews.

Ken Andrews: Mr. Chair, both this one and the one under it are addressed as **Exhibits number 6 and number 7**. Do you want to wait and do that or do you want to do that now?

Chairman Clegg: I am sorry, I do not quite follow.

Ken Andrews: Both this paragraph . . . this section and the next section **are Exhibits 6 and 7**. Submitted today. Do we want to . . . are you going to wait to go over this?

Chairman Clegg: **Exhibits 6 and 7** are . . . no we'll take . . . if somebody has a . . . those are recommended changes that were sent in by different people, so. Now's the time. I do have a confidential Attorney Client . . . it's been suggested by the Attorney General's Office that is we make reference to penalties, that we say "**subject to the penalty provisions prescribed by RSA 155-A:8 and RSA 329-A:18**". The reason for that is, until we actually repeal 329-A:18 there's two conflicting statutes. They will work okay together - one creates a felony and one a misdemeanor, and I can assure that when somebody goes to court the misdemeanor is gonna be what carries out, but we'll have to . . . its more of a legislative problem that we missed.

Tedd Evans: Can you clarify that? Which one is the felony?

Chairman Clegg: 329. And the difference is. . . I'm sorry . . . he's saying no.

Gary Bernier: 676:17 is the one that allows the option for prosecuting the violation as a felony if the violator is a corporation or other non-international person.

Chairman Clegg: You're right. I have 329 here someplace. 329-A:18 penalties is any person firm or corporation which installs any plumbing or drainage without first having to obtain a license as either a master plumber or journeyman unless he is . . . this one continues to allow the Board to prosecute unlicensed plumbers. Its 329-A:18,II that becomes a problem. There is an opinion on 676, I just got this 5 minutes before. Ken Andrews.

Ken Andrews: A question first for Deputy Commissioner Stephen. **Exhibit 7** the proposed wording is that something. . . if that is something that we can work with . . . that's the easiest way to go. Just take **Exhibit 7** and go forward with it. It doesn't reference any particular statute, it just refers us back to penalties prescribed by law.

John Stephen: If I may, I just had an opportunity to look at this as well, and I am not sure if that's what the Attorney General's Office is recommending, because that may not further clarify the matter. And I think they are asking to be more specifically clarified. And it would create the same problem we are in right now. So, I don't think that's the answer.

Ken Andrews: Thank you.

Chairman Clegg: So, the Attorney General's Office is suggesting that it say 'shall be guilty - shall be subject to the penalty provisions prescribed by RSA 155-A:8 and RSA 329-A:18,I. Ray.

Ray Cowan: Did he reference, or did he comment, on the further addition that is being proposed? Define imprisonment?

Chairman Clegg: I am trying to find that now. Med did you have anything?

Med Kopczynski: Yes. I wanted to talk about Cease and Desist. When you are ready Mr. Chairman.

?: Could you just repeat the wording that the Attorney General recommended?

John Stephen: He recommends here, 'subject

?: But we don't have that written here anywhere do we?

John Stephen: No. . . . 'subject to the penalty provisions, prescribed by RSA 155-A:8 and RSA 329-A:18, I'.

?: Thank you.

Chairman Clegg: He makes no references to 651 and 625. But it appears to me that he's saying that that's we should stop. He doesn't . . .

Tedd Evans: Roman numeral one in 329-A paragraph 18 refers to the licensing, don't we want that to be roman numeral two for a code violation?

Chairman Clegg: No. Because he thinks that 2 is in conflict with everything else we've done, and believes that we should actually . . .

Tedd Evans: But excuse Mr. Chair, but the violation penalties what we are talking about is anybody who shall violate a provision of the Code and that section of the licensing law refers to plumbing without a license. So I am just confused about why that's . . .

Chairman Clegg: When I talked to him, what he said is 155-A already covers and had penalties in it. And that it should take precedence and that since we are making a change in here, we should reference only section one. 155 should carry the other penalties and he's recommended to me that I actually try to add a repeal of roman numeral two so that lawyers don't go into the court room and argue over which statute it is and which one isn't. And he believes, there is a proper (inaudible) saying that the last law passed, but who wants to get into that argument. And that is why I am not releasing the confidential document because it gives an argument both ways. But he strongly suggests that we don't use Roman numeral two.

Med Kopczynski: I've just read it Mr. Chairman, and I concur.

John Stephen: On your note, legal issues exists between the conflicting statutes, and when one statutes seems to specifically address a specific area, that that precedence over the later. When two statutes are in conflict, its generally known as the latter statute repeals the former. In which regard to section 2, that's kind of where the AG is going on that.

Rick Swain: A point of clarification. . . this app that we are talking about here is actually, 108.4 I believe in the Code. Ok.

Chairman Clegg: Ken Andrews

Ken Andrews: Mr. Chair, I would like to make a **Motion** to insert in section 1.4 of the Code the following words: "after shall be . . will add . . .subject to the penalty provisions prescribed by RSA 155-A:8 and RSA 329-A:18 (I).

Med Kopczynski: **Second.**

Chairman Clegg: Seconded by Med.

Med Kopczynski: Yes sir, seconded.

Chairman Clegg: Moved and seconded. Any discussion?

Tyler Carlisle: Yea. May I ask Ken, are you planning to take out the words that are suggested being taken out as well?

Ken Andrews: Yes.

?: The rest of that is in the Code.

Tyler Carlisle: Well, no there are . . .

Ken Andrews: See that's a good point.

Tyler Carlisle: Following what you are adding in, there are a bunch of words that should be taken out as well, I believe.

?: Everything that is stricken is absolutely in this Code.

Tyler Carlisle: But that's not the **Motion**. The **Motion** is just to change. Yes.

Chairman Clegg: Go ahead Ken.

Ken Andrews: This was. . . I understood this was one of those sections that we were just going to fill in the blanks, which is what the Code text actually is . . . is allowing the jurisdictions to fill in those blanks, if in fact, we feel or staff feels that it should be part of the Motion to remove that verbiage, I would do that. I think that by replacing that verbiage, with that that I just proposed, would be sufficient.

Chairman Clegg: If I understand you correctly, you are removing in your Motion 'for misdemeanor, pursuant to RSA 329-A . . .' and, everything below it?

?: Mr. Chair, can I suggest that we . . .

Ken Andrews: No.

?: I think Mr. Andrews is looking at **Exhibit 6**.

Ken Andrews: Absolutely.

?: As opposed to paragraph 7.

Chairman Clegg: You need to modify . . you really need to work on **Exhibit 3** if you could.

Ken Andrews: Well, Mr. Chair, for clarification of the **Motion** that I made, going to **Exhibit 3**, the paragraph entitled Violation Penalties should read as written, up until that part of the paragraph that says, shall be guilty of. . . my **Motion** is to replace everything after the word 'be' on the 'shall be' . . . everything after that would be removed and replaced with the following: subject to the penalty provisions prescribed by RSA 155-A:8 and RSA 329-A:18(I).

Tyler Carlisle: I would **Second** that Motion.

Chairman Clegg: Moved and seconded. Any further discussion? Seeing none, all those in favor say Aye. Opposed. There being none **Motion** passed. 108.5 . . . Med.

Med Kopczynski: I haven't been able to talk to Gary about this and maybe John and Gary and whatnot can weigh in on it . . . I think in the industry, historically, there's probably a significant difference between a stop work order and what the New Hampshire RSA's use in Cease and Desist. Cease and Desist is a fairly significant legal process you go to the Courts, you get a Court Order, it's a prescribed process, it allows . . . if you fail in that process for the individual that's getting a Stop Work Order be able to claim legal fees, and things like that, and I just don't know if it's really the same subject matter. Stop work orders are normally used by jurisdictions as just a simple way to get somebody to stop doing something they shouldn't be. And then if they refuse to stop, that's normally where you get into the more formal actions that occur through Cease and Desist. And I worry a little about, if the Stop Word Order process now becomes the Cease and Desist process, what that might fortend for local government. And like I said, I apologize, I haven't really had a chance to talk to Gary about that in any depth.

Chairman Clegg: Gary, is **Exhibit 6** yours?

Gary Bernier: Yes. NH Municipal Association. Generally, towns only have the authority that's granted them by statute. And in the situation of enforcing building codes, the towns have RSA 676:17 a and 17 b. 17 a is what we are talking about here, relative to Cease and Desist orders. Now, having litigated this type of case before, typically, if a person, a violator receives a notice that does not comply with the provisions of 676:17 a - that but purports to require some stoppage of work, courts will say, well you don't comply with the statute and so, we're not going to enforce this against the violator. What Med has described to me typically, in the towns that I've worked with, takes place more of the stop work order that would be referred to in here, would be more of an informal, even verbal sort of requirement, saying listen, you are doing this wrong, stop doing it. Then if the person doesn't stop, then they get the Cease and Desist Order, like Med has described. So the formal process of it is typically, is more probably appropriately described in a statute or a code, rather than the informal piece that comes beforehand, and that's what I was trying to get at, making this consistent with what's in 155-A, which refers to 676:17 as the enforcement procedure.

Gary Abbott: (sitting in for Fred Baybutt). Gary, the question I have is if you change it to Cease and Desist under 676:17 - this is for the Plumbers Board a State Agency, not for a local municipality. 676 . . . is that for municipality use?

Gary Bernier: It is. And I agree with what Mr. Abbott is saying, however, my understanding, and I know that there are two things at work here. People can come here and ask for amendments to the Building Code and then agencies can come and ask for approval of changes to their own rules and administration as so fourth. My understanding of what we're doing here, is amending the Building Code. And to the extent that the Building Code is being amended, that will be primarily enforced by local code enforcement personnel. So if, in fact, this is for, if this is a . . . procedural devise for the Plumbing Board to use, then, I would agree with what Mr. Abbott says, they have their own method, I think its in RSA 329-A:17, they have their own method for stopping work. But if this in fact is going to be an amendment to the State Building Code, I think it should be geared towards the people enforcing that.

Chairman Clegg: I can tell you that the Attorney General's office believes that 676:17 a and b are both (inaudible) original legislation. He feels that we've . . its in 155 . . . so it all works.

Ken Andrews: I would like to speak as one of those who are responsible for enforcing the code. On a municipal level. I'm looking at Section 108.5 of what will be or is, the State Plumbing Code and its being enforced on a local level. And I have been in the business a long time, and the way that paragraph is written, presently, in the Code, in Exhibit 3, has worked, does work, and continues to work. The only part of it that didn't, was penalties and so forth. Out in reality out in the field, that all due respect Gary, that verbal 'wait a minute you are doing this wrong' changes, and works in 95% of the cases. In reality out there. And so, I feel very strongly, that rather than doing away with that entire - or most of that paragraph as proposed - we need to be really careful, because the technician in the field needs to have something, somewhere between "wait a minute you're doing it wrong - let's change it" and "go to jail - go directly to jail and do not pass go."

Gary Bernier: And I agree with what you are saying. In my mind, the language under 108.5 kicks in after you've gone through the process of getting somebody to comply with either an informal note that you post at the job site, or a conversation that you have, and I understand that, and over 99% of the cases, people comply after being told to do so. My reading of the Code, however, was that especially when you look in light of the violation penalties immediately above. Once you get to a formal enforcement action, that formal action has to be consistent with what we have for the law in New Hampshire, which has been by reference incorporated into 155-A, so I don't think you need to have in the Code, a mechanism for you to informally say to somebody, you're violating, you have to comply. I don't think the Code needs to say that. But I do think the Code has to be consistent when formal enforcement action takes place with what the statute requires.

Med Kopczynski: Mr. Chairman, I would like to make a **Motion**. That the entire section G remain in tact, except after the sentence. . . 'where an emergency exists, the code official shall not be required to give written notice prior to stopping the work. . .' that the remainder of that paragraph, that deals with penalties be stricken. And once there is a Second, I would like to speak.

?: I will **Second** it.

Med Kopczynski: I would like to that because I think what that would do it would provide the local communities, as we do in Nashua, when somebody has violated Code or started work without a permit, we issue a written stop work order. And that is something that our enforcement prosecutor uses as documentation that the person has been given notice that they are in violation of the Code, and then whenever enforcement or prosecutorial procedures that exist under the other statutes

(END OF TAPE 1)

Chairman Clegg: Seeing none - lets go to . . just appoint,

Rick Swain: Again this is an individual reference to another, what we talked about in the very beginning of the package. But this is referring to another document that is outside the code. And should we be handling that if we set up a sub-committee later on or handle it here.

Chairman Clegg: Well I think what they are doing is they are saying . . . that approved sewage disposal system in accordance with RSA 485:829 44, I think its justified in this case.

Rick: Ok.

Chairman Clegg: Anyone else? Our 904.1 - Roof extension. Any comments?

?: Are we going to vote on those two items

Chairman Clegg: We're gonna vote on everything at the end. So if we're not making any changes, there's no need at this time.

?: There was a comment last time, the millimeters on R. 12 inches or . . .

Chairman Clegg: I am an old dinosaur, what is 12 inches in millimeters? Now he wants me to do decimal multiplication without a calculator. So your amendment is to change or to add . . . 30.48 millimeter in parenthesis? Your (inaudible) extension showed 7 feet and then in parenthesis 25.4 millimeter.

?: I make the **Motion** to strike the references to the millimeters.

Chairman Clegg: Is there a **Second**?

?" Second.

Chairman Clegg: All those in favor say 'aye'.

Body: Aye

Chairman Clegg: Opposed?

Body: (none)

Chairman Clegg: Ok. 905.6 - Future fixtures. Rick Swain.

Rick Swain: I make a **Motion** to strike the additional word for future vents.

Ken Andrews: **Second** for discussion.

Chairman Clegg: Ok. discussion.

Tedd Evans: Well, I would probably normally agree with striking that, except that cause we have some new devices now about air emittance valves that are allowed in the Code, so if somebody wants to put a new fixture in their basement, they can use an air emittance valve. The problem though is that you can not use an air emittance valve to vent a sewage ejection chamber. So if somebody wants to put a bathroom in their basement, with a sewage ejector to elevate it to the elevation of the sewer, they are going to have to run a vent for that chamber. And I think . . . because the air emittance can not be used there . . . it can be used on the fixture. Its just a little distinction that came to mind doing some inspections in the last month or so. I think there is still good reason to do that, in case somebody needs to put a sewage injector in their basement. But that is all I want to say about it.

Joe Landers: (inaudible) or any occupiable space in the basement?

Med Kopczynski: Depends on whether it's a habitable basement. I would assume.

Joe Landers: It think its pretty inauctious.

Chairman Clegg: Well, any basement is habitable. Or occupiable. Any other discussion?

Rick Swain: My objection to this is that I . . . these are . . . we have been putting these in routinely in every house or every like you say, every structure with an occupiable space verses the number of these that actually get finished off and put a sewage ejector like Tedd says in. There are other ways to get a vent out . . . I mean most contractors can find a way . . . the ability to sneak a vent up through a building or they can side-wall vent, or because its only the sewage ejector (inaudible) at this point. The Code still makes requirements that if you have roughed in fixtures, you have to have a vent, so I just find this to be unnecessary. . . and its . . . its just something we haven't approved for a long time, and I think we just have it back in there because we had it for so long. I don't think its necessary. That . . . depending on how the person puts it in - that line can fill up with water and . . . its . . . it may not be in the right location.

Chairman Clegg: Its my understanding, the **Motion** on the floor is to strike the changes. Is that correct?

?: Yes.

Chairman Clegg: Any other discussion? Seeing none . . all those in favor of the **Motion** to strike the changes say Aye.

Body: Aye.

Chairman Clegg: Opposed.

Body: No.

Chairman Clegg: Those who are opposed, do they want to be so noted for the record?

Body: Does not matter to me.

Chairman Clegg: The last one . . . 1003.3.1 Grease Traps. Ken Andrews.

Ken Andrews: I would like to **move** that the proposed changes not go forward.

Chairman Clegg: Is there a Second?

Rick Swain: I will **Second**.

Ken Andrews: The reasons for my **Motion** were 20 feet is just absolutely arbitrary. Anybody who is sitting here will tell you, that they just picked a number. And there is just no justification for picking a number like that. Let's get some scientific or technical data that tells me that there's a big difference between putting it at 19' 11 ½" and 20' - just arbitrary. Let's get some data first, and then go forward if we can technically support it.

Chairman Clegg: Anyone else want to discuss this? For the record, I like this one. All in favor of the **Motion** to strike the changes, signify by saying Aye.

Body: Aye. (majority)

Chairman Clegg: Opposed?

Body: Nay, Aye(minority)

Chairman Clegg: The Ayes have it. Ok the document as a whole. Get a **Motion** to accept Exhibit 3 with all the changes.

Rick Swain: I will make the **Motion**.

Ken Andrews: **Second**.

Chairman Clegg: I am assuming we've got all the discussion we want - unless someone wants to go on the record for a purpose. Seeing none . . . all those in favor of accepting Exhibit 3 with all the changes, please signify by saying Aye.

Body: Aye (majority)

Chairman Clegg: Opposed?

Body: Nay.

Chairman Clegg: Tedd Evans would like to be noted as a Nay.

Chairman Clegg: Ok. **Exhibit 4**. Does anybody mind if we wait until next meeting for Jerry Tepe or is there anything in here that absolutely, positively has to be done?

Ken Andrews: No.

Chairman Clegg: Did we ever publish the hearing notice?

Body: No.

?: As a matter of fact, from what he said to me, this was to follow along with what you started in changing the Codes. I think this should almost be referred to the sub-committee that we made for them.

Chairman Clegg: We will hold that up. Is there any other business to come before the body?

Ray Cowan: I am concerned a little bit about the fact that we started an **Exhibit 6** and **Exhibit 7**. Because as I understand it, they came from outside this Board?

Chairman Clegg: That is correct, but they were put in by me. You are more than welcome to do the same thing. Just so everyone feels comfortable . . . if somebody from outside has good ideas, and you want to bring them forward for discussion, its unusual that we mark them as **Exhibits**, since we didn't use them, those **Exhibit** numbers will go back into the pile. Those documents won't really exist again, and there will be a new **6** and **7**.

Ray Cowan: Ok. I am glad for the clarification. I didn't say anything while we were discussing them because they were valuable. But the idea that public information was . . . or the public portion of it discussion was closed . . . was where I was coming from.

?: I remember specifically that last time, Gary was asked to provide the information. And this is how it was provided.

Chairman Clegg: But he provided it to me, so if anybody is going to take a knock on it, it was presented by me as was the other one. Excuse me the other one was Tedd.

?: I would ask of the chair, however, again, when these are provided, the name of the participants who is providing put on here - please. We have asked that before.

Ken Andrews: It was put on the agenda.

?: Oh. Ok. Sorry.

Med Kopczynski: This is the wrong venue correct me please, but there is a House Bill out there I wanted to alert to this group. It is my opinion that this House Bill will tend to discourage permits in general and I think its counter to the purposes of this Board, which is to further Code compliance, and further the permit process. And I believe the House Bill number is 496. and it's a Bill that was originally filled to promote smart growth, it was amended in Committee, to include fees to be collected and transmitted to the State to fund positions within the Office of State Planning. And the fee structure, quite frankly, is extremely difficult to understand what the intent of the author was. And I just want to make the members of this Committee aware of the Bill. And of course, they will have their own opinions of it when they read it, but I think a Bill written the way this is . . . I think will tend to erode Code compliance in general. As opposed to promote it. And that is all I am going to say Mr. Chairman.

Chairman Clegg: I will add one thing to that . . . that if the fees go to the Office of State Planning, that Office is not going to exist anymore - so I will be looking for the money.

?: I think the House Bill is 649.

Chairman Clegg: Has it already passed? so its coming to Senate?

?: It has to go to House Finance.

Bob Longchamps: I would like a clarification. I am not going to be able to be at the next meeting, and I would like to have somebody who mediates sit in my spot. Now, he sits here and does not vote . . . but he comments, like Gary did today?

Chairman Clegg: That is correct, he can participate but can not vote.

Wes Golomb: I would like to make the **Motion** that we create a sub-committee to study the places where other standards or . . . references, is that the right way to put it?

Chairman Clegg: Right. I have that authority. I will establish it. Do we have enough people that want to be on it?

Wes Golomb: I think one person from each Code.

Chairman Clegg: Right now it is Wes Golomb, William Smagula, Bob Longchamps, and Rick Swain have all agreed to put together a sub-committee and come back to this Committee with some suggestions on. . . anybody have any objects to that? Then we will just do it. Go ahead. Just do it. You will need a chair, in your own time.

Med Kopczynski: Mr. Chairman, I would be happy with that as long as you appoint Ken to it. Even though he did not raise his hand.

Chairman Clegg: Ken Andrews is also on the sub-committee, along with Med. I will take a **Motion** to adjourn. **Motion** was accepted, so **moved**, and duly **seconded**. All in favor?

Body: Aye.

Chairman Clegg: So moved.

Reminder:

The next Board meeting will be on April 11th, 2003. The future meeting will be as follows:

May - 9th
June - 13th
July - 11th
August - 8th
September - 12th
October - 10th
November - 14th
December - 12th